Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Communications Assistance for Law Enforcement Act and Broadband Access and Services	)	ET Docket No. 04-295
	)	RM-10865

COMMENTS OF AMA TECHTEL COMMUNICATIONS, LLC

AMA TechTel Communications, LLC ("AMA TechTel") hereby submits its comments on the Commission's *Notice of Proposed Rulemaking* in the above - captioned proceeding.[1] Through substantial capital investment and technological innovation, AMA TechTel is accelerating deployment of broadband and other advanced services to areas of Texas that have no alternative to cable modem and/or DSL service, or who have no broadband service at all. Hence, while AMA TechTel fully supports the adoption of rules that will help the Commission achieve the objectives of the Communications Assistance for Law Enforcement Act ("CALEA"), it is imperative that those rules do not reverse the progress AMA TechTel and other competitive telecommunications providers and competitive broadband providers have made in rural and other underserved areas over the past several years. As discussed herein, AMA TechTel believes that a balance between the two can be sustained without compromising enforcement of the CALEA statute.

I. INTRODUCTION AND SUMMARY.

[1] *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 04-187 (rel. July 7, 2004) ("*NPRM*" or "*Declaratory Ruling*" as applicable).

Beginning ten years ago with a single computer and an idea for a community bulletin board, AMA TechTel has grown to become one of the largest locally-owned competitive telecommunications providers in the state of Texas, serving more than 30,000 customers in and around Amarillo, Lubbock, Midland, and nearly 100 smaller and/or rural communities throughout the Texas panhandle. AMA TechTel uses unlicensed spectrum and wired technologies to deliver telephone and broadband services to a combined service area of over 25,000 square miles, employing over 100 individuals with a wealth of expertise in customer service, sales, marketing, engineering, finance and management.[2] Due to its strong historical ties to its region, the company is uniquely positioned to understand and anticipate the communications needs of its customers, and deliver advanced services in a timely and cost-efficient manner.[3]

AMA TechTel understands the importance of the CALEA statute – it has already equipped its wired network for CALEA compliance vis-à-vis conventional switched voice calls and other switched telecommunications services, and for packet-based VOIP calls where AMA TechTel is the end-to-end service provider (*i.e.*, where it provides both the network connection and the voice packet to the end user, with the service branded and billed as an AMA TechTel service). At the same time, however, the Commission's proposed extension of CALEA enforcement into broadband networks, and particularly

[2] AMA TechTel's telephone service includes local dial tone, long distance, calling cards, T-1 lines, ISDN and Primary Rate Interfaces. The company also provides web site services, web site hosting, Virtual Private Networks ("VPNs"), e-mail services, network administration, data protection, telephone systems, cabling, wireless networking, and advanced software solutions, with guaranteed uptime and security in accordance with the highest industry standards.

[3] AMA TechTel is a sister company of Attebury Grain, which has owned and operated grain storage facilities throughout the Texas Panhandle, North Texas, New Mexico and southern Oklahoma for forty years. With a total grain storage capability of over 120 million bushels, Attebury Grain is ranked among the top six multiple facility grain storage companies in North America.

wireless broadband networks, will impose enormous financial and logistical burdens on AMA TechTel and others that, unless tempered by reasonable regulation, will cripple broadband deployment in underserved areas that need it the most. The Commission's implementation of the CALEA statute must not invite that result.

II. DISCUSSION.

A. The Commission's CALEA Rules Must Be Balanced Against The Congressional Mandate For Accelerated Broadband Deployment Throughout the United States.

The Commission's tentative decision to apply the CALEA statute to broadband services necessarily implicates Section 706 of the Telecommunications Act of 1996, in which Congress directed the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."[4] Given that many Americans still do not have an alternative to wired broadband incumbents (if they even have access to those service providers at all), the Commission should strive to ensure aggressive broadband deployments in all areas of the country and in all sectors of the economy, as well as for educational, health, local government, public safety and other institutions that are coming to rely on broadband to deliver services to the public. AMA TechTel applauds the NPRM's recognition of that fact and the Commission's commitment to regulate accordingly.[5]

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[4] *See* § 706(a) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

[5] *See NPRM* at ¶ 31 ("[W]e recognize that LEAs' needs must be balanced with the competing policies of avoiding impeding the development of new communications services and technologies and protecting customer privacy. We are committed to finding solutions that will allow carriers and manufacturers to find innovative ways to meet the needs of the law
(continued on next page)

The tension between CALEA and Section 706 is perhaps greatest in the arena of wireless broadband service over unlicensed spectrum. The value of this segment of the broadband industry was confirmed in recent remarks by Chairman Powell:

> Historically, [the] unlicensed bands were dubbed "junk" bands because of the plethora of devices and manufacturing equipment occupying them – devices and equipment not used for communications purposes, but occupying spectrum only because RF energy was a byproduct of their operations. Now, spectrum that was formerly the exclusive province of microwave ovens and industrial equipment also plays host to wireless broadband networks that provide not only last-mile connectivity, but last-30-50-mile connectivity. In fact, and impressive by all accounts, some of your networks span large geographic regions, even covering several states. And, perhaps most importantly, many of you provide service in rural and remote communities that have no other broadband option -- demonstrating that, with relatively small investments, hard work, and ingenuity, broadband services are possible for everyone. . .[Unlicensed providers] are among my broadband heroes – spinning wheat into gold -- turning the spectrum "junk" bands into venues for providing increasingly important services to businesses and consumers.[6]

AMA TechTel is a leading example of what Chairman Powell was speaking about. Using the unlicensed spectrum at 902-928 MHz, 2.4 GHz and 5.8 GHz, the company currently has over 6,500 wireless broadband subscribers (making it one of the largest providers of wireless broadband service in the United States) and anticipates adding 8,000 more within the next 18-36 months. Notwithstanding the absence of interference protection, AMA's wireless deployment is a sophisticated, contiguous network that provides carrier class broadband service to residential, corporate and educational campuses. Indeed, the company's wireless network already has created private virtual environments for three college campuses, multiple school systems, law enforcement and

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enforcement community without adversely affecting the dynamic telecommunications industry.").

[6] Remarks by Michael K. Powell, Chairman, Federal Communications Commission, WISPCON VI, Las Vegas, Nevada (October 27, 2004).

public safety agencies, hospitals, and numerous banks within its expanding footprint. Last year, for example, AMA TechTel announced its groundbreaking partnership with Texas Tech University to build and maintain a wireless broadband telecommunications backbone stretching from Amarillo to Hobbs, New Mexico. In addition to providing rural communities with access to high-speed Internet access and other advanced services, the backbone will be a wide-area network for delivery of content used for small business development, work force training, and other adult and K-12 educational programs.[7]

By the same token, AMA TechTel's aggressive utilization of unlicensed spectrum for wide-area broadband service has not been without cost – the network exists due to the company's willingness to commit millions of dollars and countless hours of "sweat equity" to the enterprise, even in the face of increased competition from much larger and better-funded companies and difficult economic conditions in the telecommunications industry generally.[8] Those investments will be put at substantial and unnecessary risk if the Commission's CALEA rules do not make some allowance for the unique challenges faced by providers of broadband service over unlicensed spectrum, particularly in less densely populated areas of the country. For instance, in AMA TechTel's case, it would be impossible to ensure full CALEA compliance unless the company provided a packet sniffer presence at every one of its 95 Intercept Access

[7] *See* "Texas Tech University Signs Agreement to Build Network to Improve Internet Access to Rural Areas," Joint Press Release of Texas Tech University and AMA Tech Tel (July 2, 2003), available at http://www.wcai.com/press_mem2001.htm.

[8] AMA TechTel's competitors include SBC, Cox Communications and Cable One, plus a variety of smaller CLECs and competitive ISPs including Cebridge Connections (formerly Classic Cable), Centramedia, DTN Speednet, The Door (largest regional provider of Internet service in Lubbock), Five Area, NTS Online, Pegasus Rural Broadband, PTSI, WesTex Connect, WT Services and XIT Communications.

Points ("IAPs"), at a cost of $9,000 each. That cost, obviously, would grow exponentially as AMA TechTel's wireless network expands, negating any economies of scale associated therewith. Although such costs may not of great consequence to larger incumbents, for smaller providers like AMA TechTel they can mean the difference between deploying or not deploying broadband service to underserved areas.

Simply put, now clearly is not the time for the Commission to take any action in this proceeding that would reverse the gains that consumers are realizing from deployment of unlicensed spectrum for broadband service. Indeed, such action would be a cold irony given the Commission's parallel efforts in other proceedings to *promote* unlicensed wireless broadband service to rural and other underserved areas.[9] The Commission cannot realistically expect service providers to make the substantial investments necessary to take advantage of favorable regulatory developments (and pending developments in technology, such as WiMAX) if at the same time its CALEA rules undercut the economic case for broadband service over unlicensed spectrum.

B. The Commission's CALEA Rules Must Fully Account for the Additional Cost Factors Associated With Making VOIP and DSL Services CALEA-Compliant.

AMA TechTel provides packet-based VOIP service under three different scenarios. First, as noted above, AMA TechTel may be the end-to-end service provider, providing the subscriber with both the connection to the company's network and direct

[9] *See Modification of Parts 2 and 15 of the Commission's Rules for Unlicensed Devices and Equipment Approval*, 13 FCC Rcd 13539 (2004) (permitting advanced antenna technologies to utilize higher gain in unlicensed 2.4 GHz band); *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, 19 FCC Rcd 10018 (2004) (proposing to permit operation of unlicensed systems in the television "white space" below 900 MHz); *Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radios*, 18 FCC Rcd 26859 (2003) (proposing to permit use of higher power in unlicensed bands in rural areas).

delivery of voice packets to the subscriber's location. AMA TechTel's network is already CALEA-compliant for this type of situation. Second, the subscriber may take AMA TechTel's broadband service but purchase VOIP service from a different provider (*e.g.*, Vonage). In that case, because AMA TechTel is merely providing the subscriber with a "dumb" pipe that cannot identify whether the subscriber is using a third-party provider's VOIP service, the burden of ensuring CALEA compliance should fall on the third-party VOIP provider (who, unlike AMA TechTel, is in a position to identify the subscriber and make whatever provisions are necessary to intercept the subscriber's transmissions).

In the third scenario, the subscriber is using VOIP service on a peer-to-peer basis or, alternatively, is using Vonage or some other third-party provider plus a VPN or "private tunnel" that effectively denies AMA TechTel access to the information necessary for CALEA compliance. As the Commission recognizes in the *NPRM*, in these situations AMA TechTel has minimal or no involvement in the flow of packets during the communication, and instead serves primarily as a directory that provides users' Internet web addresses to facilitate the communication.[10] Accordingly, as the Commission has tentatively concluded, CALEA should not apply to AMA TechTel in these contexts either.

Finally, in considering whether and how to apply CALEA to DSL service, the Commission must account for additional costs associating with reconfiguring or replacing existing equipment to accommodate the statute. With current technology, AMA TechTel's DSLAMs are not capable of isolating a single subscriber's packet or packets, and AMA TechTel would have to physically be present at the DSLAM and segregate the subscriber's packet(s) from all the other packets being transmitted. In

[10] *See NPRM* at ¶ 37.

addition, it would cost millions of dollars for AMA TechTel to equip its wireless network and its DSL switches and routers for CALEA compliance. AMA TechTel suspects that its experience is not unique, and that the Commission therefore should not proceed towards an aggressive CALEA enforcement policy against competitive DSL providers unless and until it has developed a detailed record on the cost issue and weighed the benefits of such enforcement against any chilling effect on DSL deployments in underserved areas.

WHEREFORE, for the reasons set forth above, AMA TechTel requests that the Commission adopt rules in this proceeding consistent with the recommendations in these comments.

Respectfully submitted,

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